

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560009**

Advance Ruling No. KAR ADRG 12 / 2019

Date : 25-06-2019

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax, Member (Central Tax)
2. Dr.RaviPrasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s TATA MARCOPOLO MOTORS LTD., Belur Industrial Area,Mummigatti post, Belur Industrial Area,Garag Road, Dharwad-580011
2.	GSTIN or User ID	29AACCT5547J1ZW
3.	Date of filing of Form GST ARA-01	22.11.2018
4.	Represented by	Sri.Rajesh Shukla, Cost Accountant
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Belagavi GST Commissionerate, Club Road, Belagavi
6.	Jurisdictional Authority – State	LGSTO 310 - Dharwad
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act vide CIN HDFC19072900066047 dated 09-07-2019 and Rs.5,000/- under KGST Act vide CINSBIN18092900034474 dated 07.09.2018

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER 98(4) OF THE KARNATAKA GOODS AND SERVICES TAX ACT, 2017

1. M/s Tata Marcopolo Motors Ltd., (called as the ‘applicant’ hereinafter), having GSTIN number 29AACCT5547J1ZW, have filed an application for Advance Ruling under Section 97 of CGST Act,2017 read with Rule 104 of the CGST Rules, 2017 and under Section 97 of the KGST Act, 2017 read with Rule 104 of the KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2(a). The Applicant is a company incorporated under the Companies Act, 1956 and is registered under the Goods and Services Act, 2017. The company has sought advance ruling in respect of the following question:

Whether the activity of building and mounting of the body on the chassis by the Applicant will result in supply of goods under HSN 8707 or supply of services under HSN 9988?

2(b). The Applicant sought for the advance ruling in respect of their activity as to whether it amounts to supply of goods or supply of services and also the respective classifications. The question of the applicant is covered under Section 97 (2) (a) of CGST Act 2017, as it is with regard to classification and hence the application is admissible under the CGST Act 2017.

3. The applicant company furnishes the following facts relevant to the stated activity:

3.1 The Applicant is engaged in the business of building and mounting of body on the chassis of different models of buses.

3.2 The Applicant, for building and mounting of the body, procures various inputs such as steel sheets, square tubes, seats, glasses, wiring harness, fittings inside body, paints, FRP (Fibre-reinforced plastic), Air conditioner, Automobile parts on payment of appropriate GST and claims input tax credit on the same. They undertake the body building activity and fabrication works using aforesaid inputs and their own machines, manpower and other facilities.

3.3 The applicant receives the chassis of the bus/es from OEMs / Retail customers (Sender) on free of cost basis, under the delivery challan. Hence ownership of the chassis always remains with sender (Principal).

3.4 The Applicant submits that many of the processes / activities are common for building the body for different types of vehicles and there would be some customization based on the need of the sender and the type of the vehicle. They further submit that they can perform fabrication, welding, painting and fitment process / activities independently and can start the building activity even before the chassis is made available by the sender. In fact, for some standard type of vehicles the body can completely be built and kept ready by the Applicant and once the chassis is made available by the sender, the body needs to be mounted and fitment of seat and minor items required thereafter on it. In such a case the whole process of body building and mounting can be completed within 6 days. Then the fully built vehicle will be returned under the tax invoice to the sender,

charging 28% GST, on treating of the activity of building and mounting of the body on the chassis as supply of goods i.e. body, under HSN Code 8707. The cost of the goods components is approximately 65% of the cost of full body.

3.5 The Applicant, quoting the definition of “Job Work” in terms of Section 2(68) of CGST Act 2017 and also the activities to be treated as supply of services in terms of para 3 of schedule II of the said Act, submits that their activity of building and mounting of a body is independent one and cannot be construed as treatment / process applied to another person’s goods, as they perform the said activity on their own goods and not on the chassis provided by the sender and hence would not be covered under heading 9988 as “Job Work” and thereby Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 does not apply to the instant case.

3.6 The Applicant, further quoting the provisions of “Composite Supply” given under Section 2(30) of the CGST Act, submits that in their case, the principal supply would be of building the body and the activity of mounting the body would be incidental to it and thereby the whole transaction would be treated as Supply of goods (i.e. body). If the activity of mounting the body on chassis is not “naturally bundled” with the activity of building of the body, it can’t fall under the ambit of “Composite Supply”.

3.7 The Applicant, further quoting the meaning of “Mixed Supply” in terms of Section 2(74) of the CGST Act 2017, submits that if the activity of building the body and mounting the body is considered as “Mixed Supply”, then the supply attracts the higher rate of GST i.e. supply of body (goods) attracting 28% of GST.

3.8 The Applicant further submits that in terms of para 1 (a) of Schedule II of the CGST Act “any transfer of the title in goods is a supply of goods”. In this case, the purchase order issued by the sender is for supply of body, which is mounted on the chassis. The title and ownership of all the inputs used for building the body remains with the Applicant and the sender will not be liable for any loss that may happen to the inputs till the body built is mounted on the chassis. Therefore the contractual agreement between the sender and the Applicant is for supply of body but not the services of building the body and hence the instant activity becomes supply of goods and not the supply of services.

4. The Applicant furnished additional submissions vide their letter dated 14.02.2019, received on 21.02.2019, inter alia stating as under:

4.1 The Applicant provides the body building process, which is commonly followed by all the bus body builders depending on magnitude of their

operations, to carry out the activity of building and mounting of body on the chassis and follows the procedure in various stages, described as under:

- a) Chassis preparation: The applicant receives the chassis and works on it to make ready to carry out body fabrication and work. At “Chassis Preparation” stage, unwanted components and parts of the chassis which might be damaged in the process are removed and additional parts like brackets required for body integration are welded to the chassis and is sent to the next stage.
- b) Structure and coupling stage: Wherein tubular structure shell for the bus body is dropped and attached to the chassis, Gussets, brackets, and few other parts are fitted in the shell.
- c) Panel stage: Primer painting is done on the structure; External paneling (sides and roof) for the bus is carried out. Fitment of plywood, fibre-reinforced plastic parts like Front and Rear face etc. are fitted.
- d) Painting stage: Bus body is prepared for painting as per paint schemes opted by the customer: bus is painted booth and moved to oven.
- e) Trim Stage: Interior paneling of the bus body and components like seats, windows, vinyl etc are fitted .Also shower test is done and the bus is offered to the next and final stage of PDI.
- f) Pre-dispatch inspection stage: The said stage is done along with check list and for quality inspection. Once all checks and tests are done, the full built vehicle is ready to dispatch.

Along with said process some customization may be required on chassis owned by others (sender). Once the body mounting process on chassis is over, fully built vehicle is handed over to the owner of the chassis (sender) by raising the invoice to the extent of body building activities performed by the applicant on the chassis.

4.2 The Applicant submits that, as there was no clarity regarding the classification of activity of body building as supply of goods under HSN code 8707 and also to avoid litigation, they were discharging GST @ 28 %. Even in the earlier VAT regime, the tax was at higher rate on fully built body when supplied by a body builder to the chassis supplier (Sender) as the transaction was a sale of body and the body builder was required to pay full sales tax on the body building activity.

4.3 The Applicant, further, draws the attention to the Circular bearing No. 52/26/2018 – GST dated 09-08-2018, where in the applicable GST rate for

bus body building activity has been clarified based on the following two situations.

“12.2(a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus.

12.2(b) Bus body builder builds body on chassis provided by the principal for body building and charges fabrication charges (including certain material that was consumed during the process of job work).”

The first situation being the supply of goods attracts GST @28% and the second situation being the supply of service attracts GST @18%. Hence the Applicant, in terms of the said circular, started following the second situation and started discharging GST @ 18% thereafter with effect from September 2018.

4.4 The applicant, to substantiate the stand that the activity of body building is a supply of service, relied upon relevant legal provisions of the CGST Act 2017, i.e. Section 2(68) & Para 3 of the Schedule II of the CGST Act 2017, apart from the aforesaid circular. In terms of Section 2(68) of CGST Act 2017, “Job Work” means “any treatment or process undertaken by a person on goods belonging to another registered person” and the expression “job worker” shall be construed accordingly.” Further, Para 3 of the Schedule II of the CGST Act, specifies certain activities to be treated as supply of goods or supply of services, in accordance to which “Any treatment or process which is applied to another person’s goods is a supply of services”.

4.5 The Applicant submits that the chassis has to be made available to initiate the body building on it, which carries through various stages. Applicant also uses other materials to carry out the fabrication work, which are procured on payment of applicable GST and the ITC has been availed on such input materials. The Applicant intends to draw attention to Section 143 of CGST Act 2017 which provides that “*for the purpose of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker*”.

4.6 The Applicant, further submits that the chassis would be received from the sender i.e. other person and the body building activity would be carried out on the said chassis. Though in some cases the body building is done without chassis, the said activity would be completed only on mounting the same on chassis. Therefore the Applicant carries out the activity on the chassis supplied by the sender, using their own inputs, procured by them.

4.7 The Applicant submits that entry no.26, with regard to Chapter Heading 9988, of the Notification No. 11/2017 -Central Tax (Rate) dated 28thJune, 2017, which deals with job work activity, covers in its ambit only the manufacturing services which are performed on the physical inputs (goods) owned by others. In this case the Applicant is performing physical activity on chassis provided by the sender and hence the activity would be covered under SAC 998882, in terms of sl.no.534 of Annexure to the aforesaid Notification.

4.8 The Applicant further has drawn attention to the Advance Ruling issued by the Goa Advance Ruling Authority in the case of Automobile Corporation of Goa Ltd., wherein it is ruled that *“the activity of building and mounting of the body on the chassis provided by the principal under FOC challan will result in supply of services under HSC 9988 and hence, should be taxed @ 18% GST”*

4.9 In view of the above, the Applicant contends that the activity of bus body building, on the chassis provided by the sender by using their own inputs and capital goods, merits classification as **Supply of Services** under SAC 998882 and also under the job work provisions read with para 3 of Schedule II of CGST Act, which attracts GST @ 18% and not as supply of goods under HSN 8707, which attracts GST @ 28%.

PERSONAL HEARING: / PROCEEDINGS HELD ON 26.02.2019.

5. Sri. Rajesh Shukla, Cost Accountant and duly authorised representative of the company appeared and made submissions reiterating the issue involved and contended that the activity of bus body building, on the chassis provided by the sender by using their own inputs and capital goods, merits classification as **Supply of Services** under SAC 998882 and also under the job work provisions read with para 3 of Schedule II of CGST Act, which attracts GST @ 18% and not as supply of goods under HSN 8707, which attracts GST @ 28%.

6. FINDINGS & DISCUSSION:

6.1 We have considered the submissions made by the Applicant in their application for advance ruling, the additional submissions vide their letter date 14.02.2019, received in this office on 21.02.2019 as well as the submissions made by Sri Rajesh Shukla, the authorised representative, during personal hearing. We have considered the issue involved on which advance ruling is sought by the applicant along with relevant facts of the issue.

6.2 The applicant is engaged in the business of building and mounting of body on the chassis, provided by the owner of the chassis i.e. sender, of different models of buses. In this context they sought advance ruling on the following question:

Whether the activity of building and mounting of the body on the chassis by the Applicant will result in supply of goods under HSN 8707 or supply of services under HSN 9988?

6.3 The applicant, in the application contended that the activity of body building and mounting the same on the chassis provided by the sender using their own inputs and capital goods amounted to supply of goods classifiable under HSN 8707, attracting GST @ 28%. However, vide their additional submissions the applicant changed their stand and stated that the aforesaid activity amounted to supply of service classifiable under SAC 998882, in terms of entry serial no 534 of Annexure to Notn. No.11/2017-Central Tax (Rate) dated 28.06.2017 attracting GST @ 18%, read with Circular dated 09.08.2018.

6.4 In view of the above, the question before us to decide is whether the applicant's activity amounts to Supply of goods that merits classification under HSN 8707 or amounts to Supply of Services under SAC 9988. Therefore to answer the instant question it is essential to examine the process / activity of building the body and mounting the same on the chassis of the bus, owned by the supplier (Principal / sender)

6.5 It is an admitted fact that the chassis is not inevitable for carrying out the activity of body building. The Applicant in their application at para 2.3(e) admits that for some standard type of vehicles the body can be completely built and kept ready well in advance to the receipt of the chassis and once the chassis is made available the said ready-built body would be mounted on the chassis and the process can be completed within 6 days. On the other hand vide their letter dated 14.02.2019, in their additional submissions, the applicant states that the chassis is made available to them and then they carry out the aforesaid activity on the chassis using their own inputs and capital goods. Hence the said activity amounts to supply of services in terms the Circular dated 09.08.2018.

6.6 Therefore in the instant case two situations arise. In the first scenario the body is built without the physical presence of the chassis. The dimensions of the chassis and the required design of the body are known and the body is fabricated accordingly. Such ready built body is thereafter mounted on the chassis as and when provided by the owner. In the second scenario the chassis is provided by the owner and the applicant carries out the building and mounting of the body on the chassis in different steps as enumerated by the applicant and discussed in para 4.1 above. In both the situations the applicant use their own inputs and capital goods.

6.7 The question raised by the applicant had been raised by several other body builders and after examination of the various issues, the CBIC issued a clarificatory Circular in the matter. The Circular, No. 52/26/2018 – GST

dated 09-08-2018, clarifies the applicable GST rate for bus body building activity based on the following two situations.

“12.2(a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus.

12.2(b) Bus body builder builds body on chassis provided by the principal for body building and charges fabrication charges (including certain material that was consumed during the process of job work).”

The first situation, being the supply of goods, attracts GST @28% and the second situation, being the supply of service, attracts GST @18%.

6.8 It is evident from Para 12.2(b) of the said Circular that if the body is built on the chassis provided by the principal and the fabrication charges, including certain material consumed during the process of job work, have been charged then the activity amounts to Supply of Service and attracts 18% GST. In the instant case in terms of the process explained by the applicant the body is built on the chassis provided by the owner. Therefore the instant question is answered by the provisions of Para 12.2(b) of the said Circular and the activity merits classification as supply of service attracting GST@ 18%.

6.9 One more situation is envisaged by the applicant which is likely to have a bearing on the rate of tax applicable in the matter. In Annexure ‘A’, para 2.3(e) the applicant has brought forth that they can start building the body even before the chassis is made available by the sender. The applicant even goes further and states that for some standard types of vehicles the body can completely be built and kept ready and once the chassis is made available, the same only needs to be mounted and only some minor fitments like seats are required to be carried out. In this situation the applicant is evidently fabricating the body without the presence of the chassis. In other words the applicant does not need the goods of another person for the process of manufacture of the body. Accordingly the provisions of Para 3 of Schedule II of the CGST Act,2017 would not apply in the matter and instead the case would evidently fall under Para 1 of Schedule II of the said Act.

6.10 Besides the manufacture/fabrication of the body the applicant would also be required to mount the same on the chassis. Thus there appear to be two supplies in the matter, one being the supply of goods in the form of body and the second being supply of service of mounting/fixing the body on the chassis and also minor activities like fixing seats etc. It is seen that the fabricator of the body is also generally called upon to affix the same on the chassis. Therefore the fabrication of the body and then its mounting on the chassis appear to be two naturally bundled supplies, supplied in conjunction with each other. Therefore the applicant appears to be engaged in a composite supply where the principal supply is that of the body, i.e.

supply of goods. Accordingly the activity shall attract classification under HSN 8707 and the activity would be liable to GST @ 28 % in terms of Serial number 169 of Schedule IV of Notn. No 1/2017-Central Tax (Rate) dated 28.06.2017, effective from 01.07.2017.


7. In view of the above, we pass the following

R U L I N G

- i. The supply of ready built body and the activity of mere mounting the body on chassis supplied by the owner amounts to supply of goods and merits classification under HSN 8707, attracting 28% of GST.
- ii. The activity of step by step building of the body on the chassis supplied by the owner using their own inputs & capital goods amounts to supply of service, in terms of Circular dated 9.8.2018 and merits classification under SAC 9988, attracting 18% of GST.


25.06.2019

(Harish Dharnia)
Member


25/6/19

(Dr. Ravi Prasad.M.P.)
Member

Place : Bengaluru,
Date 25-06-2019

To,

The Applicant

Copy to:

The Principal Chief Commissioner of Central Tax, Bangalore Zone,
Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Belagavi Commissionerate, Belagavi.

The Asst. Commissioner, LGSTO - 310, Dharwad.

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